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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937.

Nos. 84 and 85

ALABAMA POWER COMPANY,

Petitioner,

vs.

HAROLD L. ICKES, AS FEDERAL EMERGENCY ADMINISTRATOR OF PUBLIC WORKS, ET AL.,

Respondents.

PETITIONER'S REPLY BRIEF.

PERRY W. TURNER,
NEWTON D. BAKER,
WILLIAM H. TIMBERLAKE,
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PETITIONER'S REPLY BRIEF.

I. PETITIONER HAS RIGHT TO QUESTION VALIDITY OF PROPOSED LOANS AND GRANTS.

Right to question the proposed loans and grants, assuming their invalidity, is challenged by the Government at the threshold of the inquiry on the grounds:

1. Petitioner, because its franchises are non-exclusive, is not protected from competition; and since the effect of the grants is to create competition, no legally protected right is invaded.

2. Petitioner, to sue a government official must sue him in his individual capacity, stripped of official position; and since a grant by "a private person" would not be wrongful, such a grant by a government official cannot be questioned.

The propositions advanced are unsound:

1. Claim That No Right Is Invaded.

The argument that because Petitioner is not protected from competition, no legally protected right is invaded, and it therefore cannot challenge the threatened grants, is without merit because:

(a) Granting that municipal competition *per se* would be lawful, yet, if it be brought about through unlawful action, and particularly where (if Petitioner is right in the claims it asserts) it is brought about by unconstitutional means, Petitioner, if injured thereby, is entitled to question the threatened unlawful action as a wrong done to it. This is demonstrated by the cases referred to on pages 24 and 27-28 of Petitioner's opening brief.

(b) But what is more important, the Government's argument proceeds upon a wholly erroneous predicate. It rests upon the premise that the competition which threatens will be lawful. It necessarily follows from the argument made, and the Government in its brief recognizes, that if the competition which threatens be unlawful, then Petitioner *is* in a position to question the means by which it is to be

brought about. *Frost* v. *Corporation Commission*, 278 U. S. 515; *Pierce* v. *Society of Sisters*, 268 U. S. 510.

That it will be unlawful is necessarily true because operation of municipal distribution systems under the plan which Respondents here seek to effectuate necessarily involves invasion by the federal government of the reserved rights of the States in violation of the Tenth Amendment. It was so charged in the bills of complaint, the allegation being (R. Vol. I, 228):

> "In the Tennessee Valley states, and particularly in the State of Alabama, the general plan of the PWA defendants above set forth has been varied by concert of action with TVA, its directors, agents and representatives in such a fashion as to provide, secure and exercise Federal control over intra-state local distribution rates for electric light, heat, and power through TVA rather than directly by PWA."

And further: (R. Vol. I, 239):

> "The grant and loan of Federal moneys to said political subdivisions, under the conditions, penalties, threats and coercion herein set forth, is an attempt by the PWA defendants to acquire for the Federal Government control over matters of a purely intrastate nature, forbidden to it by the Federal Constitution, through the device, expedient and indirect means of contractually requiring the vesting of such control in the Federal Government as a condition of the making of such grants and loans."

To understand how that will be brought about it must be borne in mind, first, that under the plan here contemplated the only source from which the municipalities can get their power, and the source from which they declare they will get it, is the Tennessee Valley Authority, and second, that they can get it only upon surrender to

TVA of the right to fix local resale rates. This is so because under the circumstances outlined in Section 10 of the TVA Act the Authority, upon sale of power, is authorized, and under the circumstances outlined in Section 12, is mandatorily required, to fix "resale rate schedules." Whether the present case falls within Section 10 or within Section 12 is unimportant because the fact is that power can be had from TVA only upon surrender to it of the power to fix intrastate resale rates, to specify the conditions under which service may be rendered to the ultimate consumer, and to determine the manner and order in which municipal revenue therefrom shall be spent.

This unmistakably appears from the fact that every contract which TVA has made with municipalities or cooperative organizations:

1. Fixes the rates at which power is to be resold, and provides that they shall not be changed save by agreement with TVA.

2. Specifies the terms and conditions, and rules and regulations, under which service shall be rendered to the ultimate consumer.

3. Determines the manner and order in which the municipality or cooperative shall dispose of revenue derived from sale of power.

4. Provides that the schedules of terms, conditions, rules and regulations, and the schedules of rates and charges upon the resale of the power, are of the essence of the contract.

That this is so, clearly appears from the contracts already executed, a list of which is set forth at pages 25 and 26 of the Appendix hereto. The contracts themselves are set forth in full in the annual reports of TVA at the places

indicated in the Appendix.[1] Because the contract in its essential provisions is identical to every other contract entered into by TVA with municipalities and cooperatives as disclosed by its reports, and in order to indicate the extent to which, in its minutest details, federal power is thus to be exercised over matters of purely state concern, the contract between TVA and Sheffield,[2] one of the cities originally involved in this controversy, is set forth in full in the Appendix hereto, pages 27 to 57.

That the plan, the completion of which Respondent Ickes proposes to effectuate in so far as the cities here in controversy are concerned, necessarily involves the exercise of federal power in a field denied to it by the Tenth Amendment further appears from the Authority's annual reports, extracts from which are set forth in the Appendix, pages 17 to 24. The Authority has said "the terms of resale by non-Federal agencies are a matter of concern to the Authority."[3] The Authority has further said that because the Act creating it stipulates a policy which will permit "use at the lowest possible rates," rates fixed by the Authority "are made a part of all contracts entered into by the Authority for the

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[1] TVA by Section 14 of the TVA Act is required to "file with each annual report * * * copies of all contracts for the sale of power." These reports the court will judicially notice, *Jackson* v. *United States*, 230 U. S. 1, 18; *New York Indians* v. *United States*, 170 U. S. 1, 34, and the information therein contained is of the kind which is within the range of judicial notice, *Texas & Pacific Ry.* v. *Pottorf*, 291 U. S. 245, 254; *Temple* v. *United States*, 248 U. S. 121, 130.

[2] Although, as the Government points out (Br. p. 47) Hoyt Greer, President of the City Commission of Sheffield, testified on the trial which started April 20, and ended May 26, 1936, that Sheffield did not have a contract with TVA, the annual report of TVA for the year ended June 30, 1936, submitted to the Congress on Dec. 31, 1936, sets forth a copy of the contract as required by law, and shows that it was executed "as of the 16th day of March 1936." The same report shows (p. 289) that some service was rendered to Sheffield as early as March 16, 1936. It is Petitioner's understanding that general service to retail customers was not to commence until Dec. 1, 1937.

[3] TVA annual report for year ended June 30, 1935; Appendix hereto, page 22.

distribution of its power.'"[4] That "concern" over the rates at which electricity shall be sold within a state, Respondents here propose to make effective through the questioned grants and loans.

That the plan is, if these grants be sustained, to launch the federal government upon a program of regulation of intrastate electric rates, terms and conditions of service, and the disposition of municipal revenue, further appears from the circumstances of the grants themselves. In the first instance, the contracts made by Respondent Ickes with Decatur, Florence, Sheffield and Tuscumbia contemplated control of resale rates by PWA itself. These contracts, however, were rescinded because, as Mr. Ickes testified, it was feared they might, in view of two lower court decisions, be invalid, and new contracts were thereupon executed eliminating the provisions whereby control of intrastate rates was vested in PWA. Mr. Ickes said (R. Vol. II, 512):

> "In the case of several of the cities whose contracts were involved in this litigation, there was an original contract and subsequently a new contract was executed which was substituted for the old contract. As the result of two court decisions some doubt was raised as to whether or not the Federal Government was assuming or had reserved continuing rights with respect to the carrying out of the contract itself, and, with respect further to the regulation of rates. It seemed to be sound from the Administration's point of view to make certain revisions. We did not agree with the rulings of the court, but they were there and we thought we had better amend in certain particulars."

This change, however, leaves the contracts in question in precisely the same condition, so far as their validity is concerned, as though the rate control provisions were expressly

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[4] TVA annual report for year ended June 30, 1936; Appendix hereto, page 24.

written therein. In other words, Mr. Ickes now proposes to do through the arm of another federal agency, namely TVA, that which he feared he could not do directly. He proposes now to put the control of intrastate rates and other matters, in so far as the present cities are concerned, in TVA, through the threatened loans and grants. That he cannot lawfully accomplish. As this Court said in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, at p. 291:

> "to a constitutional end many ways are open; but to an end not within the terms of the Constitution, all ways are closed."

The threatened grants Petitioner clearly has the right to challenge, because they are, in the words of *United States* v. *Butler*, 297 U. S. 1, but (p. 58) "a step in an unauthorized plan."

2. Claim Based on Theory of Suit Against Official.

From the premise that a suit to enjoin threatened unlawful governmental action must be brought against the officer in his individual capacity, the conclusion is drawn that because "financial aid" by "a private person" would not be wrongful, the threatened grants here cannot be questioned. The argument is demonstrably unsound because:

(a) The individual, because he is not a governmental official and has no control over governmental action, never could commit the wrong which here threatens. *Philadelphia Co.* v. *Stimson*, 223 U. S. 605. See also cases referred to on page 22 of Petitioner's opening brief. But even the individual, were he to attempt to extend his "financial aid" to these cities, either upon the express condition, or pursuant to a plan which would require, that they surrender sovereign rights to him, or his nominee, would certainly be halted by the court in his attempt, because, as was said in *Carter* v.

Carter Coal Co., 298 U. S. 238, at page 295, "State powers can neither be appropriated on the one hand nor abdicated on the other."

(b) The argument confounds the right to sue with the right to prevail. This clearly appears from *Frothingham* v. *Mellon*, 262 U. S. 447, where this Court, although holding that a federal taxpayer could not question federal expenditures, his interest being (p. 487) "minute and indeterminable," declared that a suit could be brought upon a showing that the claimant (p. 488) "has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."

II. THE THREATENED GRANTS WILL VEST IN THE FEDERAL GOVERNMENT CONTROL OVER MATTERS RESERVED TO THE STATES BY THE TENTH AMENDMENT.

If the grants and loans here in question are made, Respondent Ickes will through them, by the device discussed above, pages 3 to 7, vest in the federal government control over (a) intrastate electric rates, (b) terms and conditions under which service shall be rendered, and (c) the manner and order in which municipal revenue from sale of power shall be disposed. All of these are matters solely of intrastate concern. *Smith* v. *Illinois Bell Telephone Co.*, 282 U. S. 133. Trespass thereon by the federal government is proscribed by the Tenth Amendment. It is no answer that those objects will be accomplished only with the acquiescence of the municipality, for, as this Court pointed out in *Ashton* v. *Cameron County*, 298 U. S. 513, at page 531:

> "Neither consent nor submission by the States can enlarge the powers of Congress; none can exist except those which are granted. * * * The sovereignty of the

> State essential to its proper functioning under the Federal Constitution cannot be surrendered; it cannot be taken away by any form of legislation."

Neither is it an answer that Respondent Ickes will not directly accomplish this object, he having written out of the contracts the provisions under which he proposed to it directly, for, if indirectly done, the case stands no better. *Carter* v. *Carter Coal Co.*, 298 U. S. 238.

The plan sought to be accomplished amounts in its essential elements to a purchase by use of federal funds of "submission to federal regulation of a subject reserved to the states." *United States* v. *Butler*, 297 U. S. 1, 72. It will not do to call it an appropriation, for "An appropriation to be expended by the United States under contracts calling for violation of a state law clearly would offend the Constitution." *United States* v. *Butler*, 297 U. S. 1, 73.

1. Cannot Be Justified Under Spending Power.

Neither is the threatened action to be justified under the power of Congress to spend for the general welfare. While it is now settled that the Congress may spend for the general welfare, it is likewise settled that there are certain limits to that power, one of which is (*United States* v. *Butler*, 297 U. S. 1, 66-8) that the power cannot lawfully be made the means of controlling matters of local concern, or of exercising powers reserved to the States. The exercise of the power to appropriate, just like the exercise of any other power, "must not be contrived to govern the concerns reserved to the States." *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 338.

The Government says that because the Administrator here was acting in pursuance of national power, namely to relieve unemployment, neither his nor the Government's motives in exercising that power can be the subject of in-

quiry. This overlooks the proposition that if the necessary effect of the Administrator's action is to invade a field reserved to the States, then the fact that it may also serve some national purpose cannot make legitimate what otherwise would be a prohibited exercise of power. *United States* v. *Butler*, 297 U. S. 1; *Kansas* v. *Colorado*, 206 U. S. 46, 90. The field of regulation in intrastate matters is closed to every federal agency, and there can be no right of entry therein by any such agency even though some national purpose would also thereby be served.

2. No Authority to Enter Power Business.

More than that, the plan here contemplated will just as effectually put the federal government into the power business as though it directly proposed to build power plants and distributing systems in these Alabama towns. For this no warrant lies in the Constitution. On the contrary, the right of entry therein is denied by the Tenth Amendment. See cases referred to on page 67 of Petitioner's opening brief.

III. TITLE II OF THE NATIONAL INDUSTRIAL RECOVERY ACT AND THE EMERGENCY RELIEF APPROPRIATION ACT OF 1935 UNLAWFULLY DELEGATE LEGISLATIVE POWER.

The grants here in question are to be made under Title II of the National Industrial Recovery Act and the Emergency Relief Appropriation Act of 1935. In so far as these acts undertake to authorize non-federal projects of the kind here in question, they operate unlawfully to delegate legislative power. This is so because they leave to the Administrator, without guide, the determination of what is to be done, whether it is to be done, and under what cir-

cumstances it is to be done. If any guide at all is supplied, it must come, so far as Title II is concerned, from the authorization given by Section 203 to finance projects defined in Section 202 to "include among other things" the:

> "construction * * * of * * * any publicly owned instrumentalities and facilities,"

and so far as the Emergency Relief Appropriation Act of 1935 is concerned, from the appropriation of funds:

> "for projects of states, * * * municipalities."

When it is considered that a state may own literally any facility or instrumentality, as pointed out on page 46 of Petitioner's opening brief, the direction comes to no more than authorization to embark upon any project the Administrator may choose out of the limitless things a state may do or own, if and when, in his uncontrolled discretion, he chooses to do so. This Court pointed out in *Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522, that although business may be regulated by government when it is affected with a public interest, when it comes to instrumentalities which the State may own, there is almost no limitation. The Court said (p. 537):

> " 'Public use' in such cases would seem to be a term of *wider scope* than where it is used to describe that which clothes property or business 'with a public interest'. * * * In the latter, the use for which the tax is laid may be any purpose in which the State may engage, *and this covers almost any private business* if the legislature thinks the State's engagement in it will help the general public and is willing to pay the cost of the plant and incur the expense of operation."

If that be so, then the Administrator by these acts, in so far as non-federal projects are concerned, is authorized to roam at will over the entire field of private business, if

and when he chooses to do so, provided only the contemplated beneficiary is willing to accept the money, and that it be used for "publicly owned facilities and instrumentalities." The Government suggests that there are other limitations also: the amount must not exceed a given per centum of the cost of labor and materials, the loans must be reasonably secured, unemployment must be relieved, certain labor standards must be observed. The difficulty is these limitations do not constitute a standard, they do not announce a legislative policy as to what is to be done to effectuate the object of the statutes to relieve unemployment; they operate only if and when the Administrator has first determined what it would be wise for the federal government to do, whether it should do it, and when. In other words, the Congress has in those parts of the statutes which relate to non-federal projects, prescribed as to details, but the legislative determination of what should be done, it has delegated to the Administrator.

The Administrator, therefore, without restraint, and not the Congress, determines what shall be done to accomplish the announced purpose of the acts "to increase employment." The determination of that question, it is submitted, is a matter of legislative policy which only the Congress can lawfully determine. *Panama Refining Co.* v. *Ryan*, 293 U. S. 388; *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495.

1. Claim That Administrator's Acts Have Been Confirmed.

It is suggested that the Congress has confirmed and approved what the Administrator has done.

First: if the Congress in the subsequent acts referred to by the Government acted with knowledge of allotments for competitive power projects, it also acted with knowledge

of the entire field over which the Administrator had roamed. It did not "confirm" power projects alone; it confirmed, if the Government's claim is sound, all things the Administrator had done. It merely said, for the future, do all things you have done in the past. The claimed confirmation therefore is as much a delegation as was its original act.

Second: if there was here an unlawful delegation of legislative power, it was beyond the power of Congress, after the act, to validate it. To do so would be to delegate not once, but twice. Confirmation necessarily presupposes original power to delegate, as distinguished from the power itself to do the act. *United States* v. *Heinszen & Co.*, 206 U. S. 370, 382. But Congress has no such power. It has only those powers delegated to it, and those powers it alone can exercise. Therefore, having no power to appoint a sub-agent, it has no power to confirm an act done by such appointed sub-agent. Thus, it was said in *Mattingly* v. *District of Columbia*, 97 U. S. 687, at page 690:

> "If Congress or the legislative assembly had the power *to commit* to the board the duty of making the improvements, and to prescribe that the assessments should be made in the manner in which they were made, *it had power to ratify the acts which it might have authorized.*"

But here, lacking the power initially to delegate, it could not confirm.

There is nothing to the contrary in *Isbrandtsen-Moller Co.* v. *United States*, 300 U. S. 139, or in *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297. In the *Isbrandtsen* case the question was whether, when Congress authorized the President to transfer the functions of any "board," the Shipping Board was included therein. Similarly, in the *Swayne* case, the Court said, not that the Congress could ratify *anything*, but only that it could ratify that "which

it might have authorized." Here the Congress could not in the first instance have "authorized" a delegation of legislative power to the Administrator; it therefore could not ratify or confirm that delegation.

IV. THE PROPOSED GRANTS ARE NOT WITHIN THE STATUTES.

The Government says that the basis for the contention that the proposed grants are not authorized by the statutes, "is not clear." It is this: assuming the statutes to be valid, the threatened grants clearly fall without their terms because:

(a) If the purpose of the statutes be viewed as one to increase employment, the present projects fall without that purpose because they were approved without reference to their relation to employment and solely because they would provide an outlet for TVA power to be resold at rates and under conditions fixed by TVA. See pages 64-66 of Petitioner's opening brief.

Thus in *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, the railroads attacked the Commission's order because (p. 443) "it plainly results from the record" that the order "was based upon the assumption by that body of the possession of a power not conferred by law." In other words, the railroads said (443):

> "that body did not merely exert the power conferred by law to correct an unjust and unreasonable rate, but that it made the order which is complained of upon the theory that the power was possessed to set aside a just and reasonable rate lawfully fixed by a railroad whenever the Commission deemed that it would be equitable to shippers in a particular district to put in force a reduced rate."

The Court said (444):

> "the court below erred in not restraining the enforcement of the order complained of, because we see no escape from the conclusion that the order was void because it was made in consequence of the assumption by the Commission that it possessed the extreme powers which the railroad companies insist the order plainly manifests."

The same principle appears in *Fidelity & Deposit Co.* v. *Tafoya*, 270 U. S. 426, where the Court said (p. 434):

> "Coming then to the merits, we assume in favor of the defendants that the State has the power and constitutional right arbitrarily to exclude the plaintiff without other reason than that such is its will. But it has been held a great many times that the most absolute seeming rights are qualified, and in some circumstances become wrong. One of the most frequently recurring instances is when the so-called right is used as part of a scheme to accomplish a forbidden result."

(b) If anything be clear, it is that the Congressional intent was that under these acts funds should be advanced to relieve unemployment, and to resuscitate, not destroy, private industry.

This is perfectly clear from the policy declared in Title I, section 1: "to promote the fullest possible utilization of the present productive capacity of industries" and "to rehabilitate industry"; from the direction of section 203 of Title II that all the Administrator was to do was to be done "with a view to increasing employment"; and from the announcement of the Emergency Relief Appropriation Act of 1935 that the appropriation was made "in order • • • to increase employment." It is no answer that Congress, in view of the debates before it, knew about appropriations for competitive non-federal projects. Here, so far as the object for which the funds were made avail-

able is concerned, it is certain beyond debate that it was that they should be used to rehabilitate, not destroy, to relieve unemployment, not to cause more of it. That being so, there is no occasion for resort to Congressional debates. As the Court said in *George Van Camp & Sons Co.* v. *American Can Co.*, 278 U. S. 245, at page 253:

> "we are asked to consider reports of Congressional committees and other familiar aids to statutory construction. But the general rule that 'the province of construction lies wholly within the domain of ambiguity,' *Hamilton* v. *Rathbone*, 175 U. S. 414, 419, 421, is too firmly established by the numerous decisions of this Court either to require or permit us to do so. The words being clear, they are decisive. There is nothing to construe. To search elsewhere for a meaning either beyond or short of that which they disclose is to invite the danger, in the one case, of converting what was meant to be open and precise, into a concealed trap for the unsuspecting, or, in the other, of relieving from the grasp of the statute some whom the legislature definitely meant to include."

The grants here proposed run counter to that declared purpose. If made, they can result only in causing further unemployment, and in the destruction of industry. They are therefore without the terms of the statutes.

Respectfully submitted,

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Dec. 2, 1937.

APPENDIX.

I. EXTRACTS FROM TVA ANNUAL REPORTS RELATING TO RESALE RATES, CONDITIONS OF SERVICE, AND DISPOSITION OF REVENUE.

1. Standard Power Sale Contract.

In the annual report of the Tennessee Valley Authority for the fiscal year ended June 30, 1934, the following appears at pages 28-29:

"Standard Power Sale Contract.

A standard form of 20-year contract was devised to govern the sale of power at wholesale to municipal distribution systems, and was first used in a contract with the city of Tupelo, Miss. The Tupelo contract has been published by the Authority and is available for distribution. The major provisions of the standard contract may be summarized as follows:

Power supply.—The contractor agrees to purchase and the Authority to supply the entire power requirements of the contractor, unless exceptions are specified. The maximum demand for power which the Authority agrees to meet is specified, and provision is made for the allotment of additional capacity when needed.

Schedule of rates.—The contractor agrees to pay for power at the Authority's standard wholesale rates and to resell it at the standard schedule of retail rates established by the Authority.

Lower rates to other municipalities.—If at any time during the life of the contract, the Authority extends lower rates to another municipality which are not justified by different conditions of service, the Authority agrees to extend the lower rate to the contractor.

Developmental surcharge.—In order to maintain revenues during the developmental period in which an increased demand for power may not compensate for the greatly reduced resale rates provided by the Authority's schedule, the contractor is permitted to impose

a surcharge on commercial and industrial rates in an amount subject to the approval of the Authority.

Adjustment of rates.—Provision is made for the adjustment of wholesale and retail rates in the event of a major increase or decrease in the general price level.

Reduction in rates.—The Authority agrees to reduce wholesale rates whenever such reductions become feasible through a decline in the cost of generating and transmitting energy.

Distribution without discrimination.—The contractor agrees to distribute electrical energy to ultimate consumers without discrimination between consumers of the same class, and to avoid the granting of any discriminatory rate, rebate, or other special concession. The contractor agrees to observe the principle that the sale of energy for industrial use shall be a secondary purpose.

Disposition of contractor's revenues.—The contractor agrees to apply electric-system revenues against the following items in the order named:

Operating expenses.

Interest on electric-system bonds or other indebtedness.

Amortization of electric-system bonds or other indebtedness.

Reasonable reserves for new construction or contingencies.

Payments in lieu of taxes at rates equivalent to the taxes assessed against other property of a similar nature.

A return on the equity of not more than 6 percent per annum.

After all of these items have been covered, the contractor agrees that all remaining revenue shall be applied to reduction in rates.

Administration of contractor's system.—The contractor agrees to administer its electric system as a separate department and not to mingle funds or accounts with those of any other of its operations, to keep its electric-system accounts in accordance with a uni-

form system of accounting prescribed by the Authority, to furnish such operating and financial statements as may be requested by the Authority, and to allow the agents of the Authority to have free access to all books and records relating to electric-system operations.

Service to near-by areas.—The contractor agrees to serve near-by rural areas whenever such service can feasibly be rendered.

Conformance to specifications.—All equipment, material, and work in connection with contractor's electrical installation must conform to specifications and plans acceptable to the Authority and must be maintained in a safe and satisfactory condition.

Other rules and regulations.—The contractor agrees to be bound by any other rules and regulations adopted in the future which are standard and of uniform applicability to customers of the Authority."

2. Standard Rates Fixed For Resale of Power.

In the Annual Report of the Tennessee Valley Authority for the fiscal year ended June 30, 1934, the following appears at pages 35-36:

"Standard Residential Resale Rates.

The municipal and nonprofit customers of the Authority agree to adopt the following resale rates for residential customers:

Rate block:	Cents per kilowatt-hour.
First 50 kilowatt-hours consumed per month	3.00
Next 150 kilowatt-hours consumed per month	2.00
Next 200 kilowatt-hours consumed per month	1.00
Next 1,000 kilowatt-hours consumed per month	.40
Excess kilowatt-hours consumed per month	.75

The minimum monthly bill is $0.75 per meter.

In the case of nonprofit distributors, such as the Alcorn County Electric Power Association, residential rates are subject to a surcharge of 1 cent per kilowatt-hour for the first 100 kilowatt-hours used per month, the surcharge to be not less than $0.25 nor more than $1 per customer per month. These surcharges are in the nature of an investment by the ratepayers, the proceeds being used either to purchase the electric distribution system or to retire debt outstanding against it. The surcharges are for a temporary period only and will be abandoned upon completion of amortization of indebtedness or purchase cost.

Surcharges imposed by municipal distributors are confined to commercial and industrial customers and do not apply to residential customers.

The rates stated above are net, and gross rates 10 percent higher apply if payment is not made within 10 days of the billing date.

Standard Commercial Resale Rates.

The following resale rates are approved for all commercial and all small nonresidential customers whose average monthly usage does not exceed 4,000 kilowatt-hours:

Rate Block:	Cents per kilowatt-hour.
First 250 kilowatt-hours consumed per month	3.0
Next 750 kilowatt-hours consumed per month	2.0
Next 1,000 kilowatt-hours consumed per month	1.0
Excess kilowatt-hours consumed per month	0.8

The minimum monthly bill is $1 per meter.

Commercial rates may be subject in all cases to a developmental surcharge, the amount of which is determined by the distributor. Surcharges are temporary in character and are used to maintain revenues during developmental periods when increased demand

may not fully compensate for reductions in rates. The highest surcharge in effect on June 30 for commercial and industrial customers was 10 percent of net monthly bills plus an amortization charge of 1 cent per kilowatt-hour for the first 100 kilowatt-hours per month, and not less than $0.25 per month.

The above rates are net, and gross rates 10 percent higher apply if payment is not made within 10 days.

Standard Industrial Resale Rates.

Basic industrial rates are available to all industrial and large nonresidential customers having demands of not less than 10 kilowatts. The rates include a demand charge of $1 per kilowatt of demand per month, demand being defined as the highest integrated load during any 30-minute period during the month for which determination is made. The demand charge may be adjusted to compensate for power factors lower than 85 percent. The energy charge is as follows:

Rate block:	Cents per kilowatt-hour.
First 10,000 kilowatt-hours consumed per month	1.00
Next 25,000 kilowatt-hours consumed per month	0.60
Next 65,000 kilowatt-hours consumed per month	0.40
Next 400,000 kilowatt-hours consumed per month	0.30
Excess kilowatt-hours consumed per month	0.25

The minimum monthly bill is 60 percent of the highest monthly demand charge occurring during the previous consecutive 12 months' period.

Provisions for surcharges and penalties for delinquency in payment of bills are the same as for commercial customers."

3. Distribution of Power by Municipalities.

In the Annual Report of the Tennessee Valley Authority for the fiscal year ended June 30, 1935, the following appears at pages 26-27:

"The Authority, with limited and temporary exceptions, is not engaged in the distribution of electricity to the ultimate consumer. Its functions, in the main, terminate with delivery of power in bulk to the lines of distribution agencies, public and private. The statute, however, requires the Authority to encourage wide use of the power thus sold in bulk, so that the terms of resale by non-Federal agencies are a matter of concern to the Authority, and are covered by the contract for sale of bulk supply.

Power generated at Wilson Dam reaches the ultimate consumer through four principal types of distribution facilities:

1. *Municipalities.*—Cities which own their distribution systems may contract with the Authority to supply them with power at wholesale rates. A standard form of 20-year contract was devised to apply to the sale of power at wholesale to municipal distribution systems, and was first used in a contract with the city of Tupelo, Miss. All of the Authority's contracts with municipalities for the sale of power are filed with this report, as required by law. The provisions of chief interest in these contracts may be mentioned. The contractor agrees to purchase its entire power requirements from the Authority, unless exceptions are specified. The contractor agrees to pay for power at the Authority's standard wholesale rates. The electricity is resold at retail rates established by agreement between the contractor and the Authority. The contractor agrees to apply electric-system revenues against the following items in the order named:

Operating expenses.

Interest on electric-system bonds or other indebtedness.

Amortization of electric-system bonds or other indebtedness.

Reasonable reserves for new construction or contingencies.

Payments in lieu of taxes at rates equivalent to the taxes assessed against other property of a similar nature.

A return on the equity of not more than 6 percent per annum.

After all these items have been covered, the contractor agrees that all remaining revenue shall be applied to reductions in rates. The contractor agrees to administer its electric system as a separate department and not to mingle funds or accounts with those of its other operations, to keep its electric-system accounts in accordance with a uniform system of accounting prescribed by the Authority, and to furnish such operating and financial statements as may be requested by the Authority."

4. Disposal of Surplus Power.

In the Annual Report of the Tennesee Valley Authority for the fiscal year ended June 30, 1936, the following appears at pages 6-7:

"With the disposal of surplus power, however, we begin to follow a course in which the Federal Government must enlist the cooperation and depend upon the initiative of State and local governments and of voluntary groups of citizens. The Authority's right to seek a market has been upheld by the Supreme Court of the United States in the Ashwander case, cited elsewhere in this report. Since at present there is no competitive bidding for its power at the dams, it must build, buy, or acquire the use of transmission lines if it is to have a choice as to the distributors to whom it will sell. Some of these transmission lines serve the further purpose of interconnecting the power-houses at the several dams, making it possible to transmit

power back or forth according to demand and supply, so that the system can be operated as a unit.

Where is the market to be found? The statute says that the Authority must give preference to "States, counties, municipalities, and cooperative organizations of citizens or farmers, not organized or doing business for profit but primarily for the purpose of supplying electricity to their own citizens or members." It stipulates a policy which "will permit domestic and rural use at the lowest possible rates and in such manner as to encourage increased domestic and rural use of electricity." In order that such rates may prevail they are made a part of all contracts entered into by the Authority for the distribution of its power."

II. CONTRACTS MADE WITH CITIES AND COOPERATIVES FOR RESALE OF POWER.

The Tennessee Valley Authority by Section 14 of the TVA Act is required to "file with each annual report • • • copies of all contracts for the sale of power." The reports for 1935 and 1936† show that the Authority has entered into contracts with sixteen municipalities and nine cooperatives for the resale of power. Each contract:

(a) fixes the rates at which power is to be resold, and provides that the city or cooperative shall not depart therefrom except with consent of the Authority;

(b) specifies the terms and conditions and rules and regulations under which service shall be rendered to the ultimate consumer;

(c) determines the manner and order in which the municipality or cooperative shall dispose of revenue derived from sale of power;

(d) provides that the schedules of terms, conditions, rules and regulations and the schedules of rates and charges are of the essence of the contract.

The contracts with municipalities, their date of execution, and the place where they are set forth in full in the annual reports of the Tennessee Valley Authority are:

Municipality.	Date.	1935 Report page.
Tupelo, Miss.	Nov. 13, 1933	157
Pulaski, Tenn.	Mar. 8, 1934	162
Amory, Miss.	Mar. 9, 1934	167
Athens, Ala.	Apr. 6, 1934	173
Dayton, Tenn.	Sept. 12, 1934	187
New Albany, Miss.	Sept. 13, 1934	194
Muscle Shoals, Ala.	Jan. 19, 1935	201
Okolona, Miss.	Apr. 23, 1935	215

† 1937 report is not yet available.

Municipality.	Date.	1936 Report page.
Dickson, Tenn.	Oct. 23, 1935	144
Holly Springs, Miss.	Nov. 12, 1935	158
Memphis, Tenn.	Nov. 23, 1935	169
Bolivar, Tenn.	Dec. 31, 1935	141
Milan, Tenn.	Dec. 31, 1935	189
Somerville, Tenn.	Dec. 31, 1935	237
Knoxville, Tenn.	Feb. 19, 1936	166
Sheffield, Ala.	Mar. 16, 1936	223

The contracts with cooperatives, their date of execution, and the place where they are set forth in full in the annual reports of Tennessee Valley Authority are:

Cooperative	Date	1935 Report page.
Alcorn County Electric Power Corporation	June 1, 1934	179
Pontotoc County Electric Power Association	Feb. 15, 1935	206
Prentiss County Electric Power Corporation	Jun. 13, 1935	226
Monroe County Electric Power Association	July 19, 1935	192
Tishomingo County Electric Power Association	July 19, 1935	240
Meigs County Electric Membership Corporation	Oct. 14, 1935	186
Tombigbee Electric Power Association	Oct. 19, 1935	245
Pontotoc Electric Power Corporation	Feb. 12, 1936	218
North Georgia Electric Membership Corporation	June 15, 1936	205

III. CONTRACT FOR SALE OF POWER BY TVA TO SHEFFIELD.

The contract executed March 16, 1936, between the Tennessee Valley Authority and the City of Sheffield, Alabama, is set forth in full in the annual report of the Tennessee Valley Authority for the fiscal year ended June 30, 1936, at pages 223-237, and reads as follows:

"Power Contract Between Tennessee Valley Authority and City of Sheffield, Ala.

This agreement, made and entered into as of the 16th Page 2
day of March 1936, pursuant to the Tennessee Valley Authority Act of 1933, between the Tennessee Valley Authority, hereinafter called Authority, a corporation created by and acting under said act, and the city of Sheffield, hereinafter called municipality, a municipal corporation duly organized, created, and existing under and by virtue of the laws of the State of Alabama.

Whereas Authority, by section 10 of said act, is authorized to sell the surplus power generated by it and not used in its operations, and is directed to give preference to States, counties, municipalities, and co-operative organizations of citizens or farmers not organized or doing business for profit; and

Whereas by section 11 of said act it is provided that the sale of power by Authority shall be primarily for the benefit of the people of the section as a whole and par- Page 2
ticularly the domestic and rural consumers to whom the power can economically be made available; and

Whereas the electors of the municipality have by referendum authorized municipality to acquire by construction or purchase a municipal electric distribution system, and municipality intends, with all possible diligence and expedition, to acquire by construction or purchase and to operate such a system; and

‡ The marginal references are to pages of Annual Report of TVA for the year ended June 30, 1936.

Whereas municipality desires to purchase power from Authority for municipal purposes and for resale and proposes to pay therefor; and

Whereas municipality has by ordinance of its council duly authorized the making of this contract, and Authority, by its by-laws and resolutions, has likewise so authorized;

Now, therefore, for and in consideration of the mutual covenants herein contained, and subject to all of the provisions of the Tennessee Valley Authority Act of 1933, the parties hereto mutually covenant and agree as follows:

1. *Term of contract.*—This contract shall be effective as of the 16th day of March, 1936, and all service and payment periods hereinafter referred to shall be computed as from that date. The contract shall continue in effect for 20 years.

2. *Acquisition of system.*—Municipality agrees to use all reasonable diligence in acquiring by construction or purchase a complete municipal distribution system for the city of Sheffield, and to do all acts and things which it may legally do, which may be necessary or helpful in effectuating such acquisition.

3. *Power supply.*—Authority will, from the effective date of this contract to the expiration thereof, supply electricity to municipality for municipal purposes and for resale. Municipality agrees to purchase from Authority, and Authority agrees to supply, the entire electricity requirements of municipality. Should municipality during the period of this contract desire to increase its purchases in excess of 4,500 kilowatts, Authority shall deliver such excess upon written demand and after reasonable notice, provided that the requirements of Authority and/or the United States reasonably enable it to do so. Reasonable notice shall be defined as 9 months after date of demand if the additional requirements are 5,000 kilowatts or less, 12 months after date of demand if the additional requirements are over 5,000 kilowatts, but not over 10,000 kilowatts, and 2

years after date of demand if additional requirements are in excess of 10,000 kilowatts. Said energy shall be delivered in the form of 3-phase, alternating current, at approximately 60 cycles per second and approximately 11,000 volts, or at such other voltage as the parties may from time to time agree. While it is not the function of Authority to guarantee accurate time by the maintenance of accurate frequency, Authority agrees to supply such frequency as is recognized to be good commercial frequency on a hydroelectric system.

4. *Point of delivery.*—Authority shall deliver the electricity purchased hereunder at the metering equipment situated at the west boundary of the United States Government reservation known as nitrate plant No. 2, or at such other point or points as shall be mutually agreed upon.

5. *Schedule of rates.*—Attached hereto, and hereby made a part hereof, is a schedule of rates and charges. Municipality agrees to pay for the energy supplied by Authority at the rates fixed in schedule A-1 entitled "Wholesale power rate." All payments shall be made to Authority at its offices at Wilson Dam, Ala., or at such other place as Authority may from time to time designate.

6. *Resale rates.*—In order to facilitate the disposition of surplus power generated by Authority and not needed by it in its operations, and in order to carry out the intention of Congress to encourage the more abundant use of electricity throughout the area in which municipality operates, municipality agrees to charge consumers the rates set forth for the several classes thereof in schedules B-1 to B-5, inclusive, of the said schedule of rates and charges, and not to depart therefrom except by agreement of the parties. Additional resale schedules for special classes of consumers or special uses of electricity may be added from time to time by agreement of the parties. The term "contractor" in said schedule shall be construed to mean municipality. If it should appear that the rates provided for in said resale sched-

ules with the surcharge provided for therein do not produce revenues sufficient to operate and maintain municipality's electric system on a self-supporting and financially sound basis, then municipality shall, by agreement with Authority, prescribe and enforce such changes in rates as will provide for the increased revenues necessary to place the system upon such a self-supporting and financially sound basis.

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7. *Disposition of municipality's revenues.*—Municipality, deeming it necessary for the purposes of this contract, and for the purpose of providing reasonable rates for electric service pursuant to this contract and to the law, agrees to dispose of its gross revenues from electric operations in the following manner:

(a) Revenues shall first be used for the payment of all current operating expenses, including salaries, wages, cost of materials and supplies, power at wholesale, and insurance.

(b) From remaining revenues municipality shall next currently provide for the payment at maturity of interest accrued on all bonds or other indebtedness applicable to municipality's electric system, and for amortization charges on all such bonds or other indebtedness and/or sinking-fund payments thereon.

(c) Thereafter revenues shall be used currently to set up reasonable reserves for replacements, new construction, and for contingencies, and to provide a reasonable amount of cash-working capital.

(d) From remaining revenues municipality shall thereafter pay into its general fund a return on its investment and a tax equivalent as provided in the financial and accounting policy in the schedule of terms and conditions attached hereto.

(e) All remaining revenues shall be considered surplus revenues and may be devoted by municipality to the purchase of retirement of bonds or other indebtedness applicable to the electric system before maturity, and if not so devoted shall serve as the basis for the reduction or elimination of surcharges to consumers, and

thereafter for the reduction of rates. Surplus revenues shall be computed as of December 31 and June 30 of each year.

8. *Payment for municipality's energy requirements.*—Municipality agrees to pay into its electric funds from appropriate general or special funds for all electric service required by municipality for street lighting, water pumping, and other operations and uses, at the resale rates as set forth in the schedule of rates and charges, with such modifications and additions as may from time to time be agreed upon by the parties.

9. *Terms and conditions; rules and regulations.*—Attached hereto, and hereby made a part hereof, are two schedules, entitled respectively "Schedule of terms and conditions" and "Schedule of rules and regulations." The provisions of either or both schedules may from time to time be changed or supplemented by agreement of municipality and Authority, without limitation on the right of municipality from time to time, upon not less than 10 days' written notice to Authority, to prescribe and enforce such additional reasonable rules and regulations as it may determine, not inconsistent with this contract (including the schedules thereof). The term "distributor" in the latter schedule shall be construed to mean municipality. It is understood and agreed that the several provisions of the said schedules, with such changes as may from time to time be adopted pursuant hereto, as well as the several provisions of this contract and of the schedule of rates and charges, are of the essence of this contract. Municipality hereby adopts such schedule of rules and regulations as the rules and regulations of municipality.

10. *Reports to Authority.*—Municipality agrees that, not later than the 1st day of September of each year, it will render to Authority a complete report, in such form as Authority may prescribe, of the results of its operations for the preceding year ending June 30, the

condition of its property, and such other information as Authority may reasonably request. Municipality agrees promptly to render such additional reports and information to Authority as Authority may from time to time reasonably request.

11. *Discrimination.*—Municipality agrees that the surplus power purchased hereby shall be sold and distributed to the ultimate consumer without distribution between consumers of the same class, and that no discriminatory rate, rebate, or other special concession will be made or given to any customer.

12. *Waiver of defaults.*—Any waiver at any time by either party hereto of its rights with respect to any default of the other party hereto and/or with respect to any other matter arising in connection with this contract shall not be considered a waiver with respect to any subsequent default or matter.

13. *Contract not transferable.*—Neither this contract or any interest therein shall be transferable or assignable by municipality to any other party without the consent of Authority.

ge 226 14. *Renewal or extension.*—Authority agrees to enter into negotiations with municipality looking to the renewal or extension of this contract, so far as may be permitted by law, at least 2 years before the expiration thereof.

In witness whereof the parties hereto have caused this instrument to be signed and attested in duplicate, by their duly authorized officers, the day and year first above written.

TENNESSEE VALLEY AUTHORITY,
[SEAL.] By ARTHUR E. MORGAN,
Chairman, Board of Directors.
Attest: CHARLES E. HOFFMAN,
Assistant Secretary,
City of Sheffield.
[SEAL.]
By HOYT GREER,
President of the Board of Commissioners and ex-Officio Mayor.
Attest: PETER STOUT (?),
City Clerk.

Schedule of Rates and Charges—Wholesale Power Rate—Schedule A-1.

Rate.

Demand charge.—Ninety cents per kilowatt of demand per month.

Energy charge.—First 100,000 kilowatt-hours consumed per month, at 4 mills per kilowatt-hour; next 200,000 kilowatt-hours consumed per month, at 3 mills per kilowatt-hour; next 700,000 kilowatt-hours consumed per month, at 2.5 mills per kilowatt-hour; excess over 1,000,000 kilowatt-hours consumed per month, 2 mills per kilowatt-hour. Charge for energy in excess of 360 times the demand shall be subject to a reduction of 6.5 mill per kilowatt-hour from the otherwise applicable rate.

Determination of Demand.

Demand measurement shall be made by suitable instruments at the point or points of delivery. Demand for any month shall be defined as the highest integrated simultaneous load during any 60-minute period during the month for which determination is made.

Adjustment of Demand Charge for Power Factor.

Demand charge may be adjusted if and when Authority deems necessary to correct for power factors lower than 85 percent. Such adjustments will be made in such manner as to bring the demand charge to the equivalent of 85 percent power factor.

Minimum Monthly Bill.

Ninety conts per kilowatt of demand, but in no case shall the minimum bill be less than the charge for 60 percent of the highest demand occurring during any months within the previous consecutive 12-month period.

Allowance on Sales to Residental Consumers.

Authority will adjust bill so that contractor shall be billed at 2 mills per kilowatt-hour for at least so much

energy as may be sold by contractor under the residential resale schedule at 4 mills per kilowatt-hour.

Discount.

Because the power sold to contractor is non-transmitted power, bills shall be subject to a discount of 10 percent.

Standard Residential Rate—Schedule B-1.

Availability.

Available for domestic use to all residential customers served from local alternating current distribution systems.

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Character of Service.

Alternating current service at approximately 60 cycles, 110 or 220 volts, either single-phase, two-wire, or three-wire; or, three-phase, three-wire, or four-wire, as may be required by contractor.

Rate.

First 50 kilowatt-hours consumed per month, at 3 cents per kilowatt-hour; next 150 kilowatt-hours consumed per month, at 2 cents per kilowatt-hour; next 200 kilowatt-hours consumed per month, at 1 cent per kilowatt-hour; next 1,000 kilowatt-hours consumed per month, at 0.4 cent per kilowatt-hour; excess over, 1,400 kilowatt-hours consumed per month, at 0.75 cent per kilowatt-hour.

Minimum Monthly Bill.

Seventy-five cents per meter.

Payment.

Above rates are net, the gross rates being 10 percent higher. In the event that the current monthly bill is not paid within 10 days from date of bill, the gross rates shall apply.

Service under this classification is subject to rules and regulations of contractor.

Basic Commercial Rate—Schedule B-2.

Availability.

Available to all commercial and all small nonresidential light, heat, and power customers having demands not greater than 20 kilowatts and whose average monthly usage does not exceed 4,000 kilowatt-hours. Customers with demands exceeding 20 kilowatts and/or using on the average in excess of 4,000 kilowatt-hours per month will be billed according to the basic industrial rate, schedule B-3.

Character of Service.

Alternating current service from the local distribution system at approximately 60 cycles, 110 or 220 volts; either single-phase, two-wire, or three-wire; or, three-phase, three-wire, or four-wire, as may be required by contractor.

Rate.

First 250 kilowatt-hours per month at 3 cents per kilowatt-hour; next 750 kilowatt-hours per month at 2 cents per kilowatt-hour; next 1,000 kilowatt-hours per month at 1 cent per kilowatt-hour; excess over 2,000 kilowatt-hours per month at 0.8 cent per kilowatt-hour.

Determination of Demand.

In the event of question arising as to the demand, or upon the written request of the customer, it shall be determined by inspection or test, at the option of contractor. The demand for any month shall be defined as the highest integrated load during any 30-minute period during the month for which the determination is made.

Minimum Monthly Bill.

$1 per meter.

Surcharge.

Rate is subject to a surcharge as provided in schedule of terms and conditions.

Payment.

Above rates including surcharge are net, the gross rates being 10 percent higher. In the event the current monthly bill is not paid within 10 days from date of bill, the gross rates shall apply.

Service under this classification is subject to rules and regulations of contractor.

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Basic Industrial Rate—Schedule B-3.

Availability.

Available to all industrial and all large nonresidential light, heat, and power customers having demands greater than 20 kilowatts and/or customers whose average monthly usage exceeds 4,000 kilowatt-hours. Customers with demands not greater than 20 kilowatts and using on the average not in excess of 4,000 kilowatt-hours per month will be billed according to the basic commercial rate, schedule B-2.

Character of Service.

Alternating current, three-phase, 60 cycles. Voltage supplied will be at the discretion of contractor and will be determined by the voltage available from distribution lines in the vicinity and/or other conditions.

Rate.

Demand charge.—$1 per kilowatt of demand per month.

Energy charge.—First 10,000 kilowatt-hours consumed per month at 10 mills per kilowatt-hour; next 25,000 kilowatt-hours consumed per month at 6 mills per kilowatt-hour; next 65,000 kilowatt-hours consumed per month at 4 mills per kilowatt-hour; next 400,000 kilowatt-hours consumed per month at 3 mills per kilo-

watt-hour; excess over 500,000 kilowatt-hours consumed per month at 2.5 mills per kilowatt-hour.

Determination of Demand.

Demand measurement shall be made by suitable instruments at the point or points of delivery, except, at the option of contractor, demand may be determined by inspection or test. Demand for any month shall be defined as the highest integrated load during any 30-minute period during the month for which determination is made.

Adjustment of Demand Charge for Power Factor.

Demand charge may be adjusted, if and when contractor deems necessary, to correct for power factors lower than 85 percent. Such adjustments will be made in such manner as to bring the demand charge to the equivalent of 85 percent power factor.

Mipimum Monthly Bill.

$1 per kilowatt of demand, but in no case shall the minimum bill be less than the charge for 60 percent of the highest demand occurring during any month within the previous consecutive 12-month period.

Surcharge.

Rate is subject to a surcharge as provided in schedule of terms and conditions.

Payment.

Above rates including surcharge are net, the gross rates being 10 percent higher. In the event the current monthly bill is not paid within 10 days from date of bill, the gross rates shall apply.

Service under this classification is subject to rules and regulations of contractor.

Seasonal Industrial Rate (Optional)—Schedule B-4.

Availability.

Available for seasonal service not to exceed 6 consecutive months per year, only to industrial and large power users having demands not less than 25 kilowatts, whose operations and business are by nature seasonal.

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Character of Service.

Alternating current, 3-phase, 60 cycles. Voltage supplied will be at the discretion of contractor and will be determined by the voltage available from distribution lines in the vicinity and/or other conditions.

Application of Rate.

For the first 4 consecutive months per season, customer will be billed according to part I of the schedule, and for remainder of such season (not to exceed 2 months) customer will be billed according to part II of the schedule. Rules governing payment and deposit and other rules and regulations for service under this classification apply to both parts I and II of this schedule.

Rate—Part I.

Demand Charge.—$1.60 per kilowatt of demand per month.

Energy charge.—First 10,000 kilowatt-hours per month at 10 mills per kilowatt-hour; next 25,000 kilowatt-hours per month at 6 mills per kilowatt-hour; next 65,000 kilowatt-hours per month at 4 mills per kilowatt-hour; next 400,000 kilowatt-hours per month at 3 mills per kilowatt-hour; excess over 500,000 kilowatt-hours per month at 2.5 mills per kilowatt-hour.

Determination of Demand.

Demand measurement shall be made by suitable instruments at the point or points of delivery, except,

at the option of contractor, demand may be determined by inspection or test. Demand for any month shall be defined as the highest integrated load during any 30-minute period during the month for which determination is made.

Adjustment of Demand Charge for Power Factor.

Demand charge may be adjusted, if and when contractor deems necessary, to correct for power factors lower than 85 percent. Such adjustments will be made in such manner as to bring the demand charge to the equivalent of 85 percent power factor.

Minimum Monthly Bill.

Minimum monthly bill shall be $1.60 per kilowatt of demand, but in no case shall the minimum charge for the season be less than $4.80 per kilowatt of the highest demand occurring during any month of the seasonal period.

Surcharge.

Rate is subject to a surcharge as provided in schedule of terms and conditions.

Rate—Part II.

Demand charge.—None.

Energy charge.—First 250 kilowatt-hours per month at 3 cents per kilowatt-hour; next 750 kilowatt-hours per month at 2 cents per kilowatt-hour; next 1,000 kilowatt-hours per month at 1 cent per kilowatt-hour; excess over 2,000 kilowatt-hours per month at 0.8 cent per kilowatt-hour.

Minimum Monthly Bill.

$3 per meter.

Surcharge.

Rate is subject to a surcharge as provided in schedule of terms and conditions.

Payment.

Above rates including surcharge are net, the gross rates being 10 percent higher. In the event the current monthly bill is not paid within 10 days from date of bill the gross rates shall apply.

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Deposit.

A deposit or suitable guaranty may be required from each customer, such deposit to be not more than twice the amount of the customer's normal monthly bill as established by application of part I of this schedule.

Service under this classification is subject to rules and regulations of contractor.

Standard Street Lighting Rate—Schedule B-5.

Availability.

Available for street or roadway lighting for term of not less than 1 year.

Character of Service.

Alternating current service, either series or multiple system or combination.

Application of Rate.

Where contractor's electric system bears the cost of operation and maintenance of the equipment used in the street or roadway lighting system, the rate consists of an energy charge at basic commercial rate, schedule B-2, and a maintenance charge.

Where contractor's electric system does not bear the cost of operation and maintenance of the equipment used in the street or roadway lighting system, only the energy charge will apply.

Rate.

Energy charge.—First 250 kilowatt-hours per month at 3 cents per kilowatt-hour; next 750 kilowatt-hours per month at 2 cents per kilowatt-hour; next 1,000 kilo-

watt-hours per month at 1 cent per kilowatt-hour; excess over 2,000 kilowatt-hours per month at 0.8 cent per kilowatt-hour.

Maintenance charge.—

Lamp rating:	Unit charge per month
1,000 lumen series, or 100-watt multiple	$0.80
2,500 lumen series, or 150-watt multiple	1.05
4,000 lumen series, or 200-watt multiple	1.40
6,000 lumen series, or 300-watt multiple	1.70
10,000 lumen series, or 500-watt multiple	2.15

Surcharge.

Energy charge is subject to a surcharge as provided in schedule of terms and conditions.

Payment.

Above rates including surcharge are net, the gross rates being 10 percent higher. In the event the current monthly bill is not paid within 10 days from date of bill the gross rates shall apply.

Service under this classification is subject to rules and regulations of contractor.

Schedule of Terms and Conditions.

1. *Measurement of demand, energy, and power factor.*—Demand and energy measurements shall be made by suitable instruments at the point or points of delivery or may, at the option of Authority, be made at some other point or points where housing facilities are available or may be made available and/or operation simplified. In the event metering is effected at some other location than at point of delivery, suitable correction shall be made by Authority of the amounts determined at such location so that the adjusted amounts will so far as possible reflect the exact quantities delivered at the actual point or points of delivery.

Authority will, at its own expense, install and maintain the necessary meters for measuring the maximum

demand and the amount of energy furnished municipality. Should these meters fail on be found inaccurate the maximum demand and amount of energy delivered will be estimated by Authority from the best information available. Authority may also, at its option, from time to time measure power factor. Municipality shall permit the use of its housing facilities, ducts, and supports for Authority's metering equipment.

Municipality shall have the right to install, equip, and maintain at its own expense suitable instruments for measuring demand, power factor, and energy adjacent to Authority's measuring devices for purposes of a check on said devices, and Authority agrees that it will, so far as practicable, provide suitable facilities for the installation of such metering devices within its substation enclosures.

2. *Meter tests.*—Authority will, at its own expense, and in the presence of representatives of municipality, make periodical tests and inspections of its meters in order to maintain a high standard of accuracy. Authority will make additional tests or inspections of its meters at the request of municipality, and in the presence of representatives of municipality. If such additional tests show that the meter is accurate within 2 percent, slow or fast, no adjustment will be made in municipality's bill and the testing charge will be paid by municipality. In case the tests show the meter to be in excess of 2 percent, fast or slow, an adjustment shall be made in municipality's bill over a period of not over 30 days prior to date of such test, and cost of making test shall be borne by Authority.

3. *Municipality's lines and equipment, ownership.*—All lines and substations from point of delivery (as defined in the contract of which these terms and conditions are a part), and all electrical equipment, except the metering equipment of Authority, located on municipality's side of such point of delivery, shall be furnished and maintained by municipality.

4. *Inspections.*—Authority shall have the right, but shall not be obligated, to inspect any installation before electricity is introduced or at any later time, and reserves the right to reject any wiring or equipment not in accordance with Authority's reasonable standards; but such inspection, or failure to inspect, or to reject, shall not render Authority liable or responsible for any loss or damage resulting from defects in the installation of any electrical equipment or from violation of the contract of which these terms and conditions are a part or from accidents which may occur upon municipality's premises.

5. *Municipality's responsibility for Authority's property.*—All meters, service connections, and other equipment furnished by Authority shall be, and remain, the property of Authority. Municipality shall exercise proper care to protect the property of Authority on municipality's premises and in the event of loss or damage to Authority's property, arising from neglect of municipality to care for same, the cost of necessary repairs or replacement shall be paid by municipality.

6. *Right of access.*—Authority's identified employees shall have access to municipality's premises at all reasonable times for the purpose of reading meters, and for testing, repairing, renewing, or exchanging any or all equipment belonging to Authority.

7. *Additional load.*—The service connection, transformers, meters, and equipment supplied by Authority for municipality have definite capacity and no addition to the equipment or load connected thereto, in excess of such capacity, shall be made except after reasonable notice to Authority. Failure to give such notice of additions or changes in load shall render municipality liable for any damage to Authority's lines or equipment caused by the additional or changed installation.

8. *Municipality's lines and equipment, standards.*—All lines and equipment of municipality must conform to accepted modern practice, as exemplified by the requirements of the National Electrical Safety Code and the National Electric Code.

9. *Accounting and handling of funds.*—Municipality agrees:

(*a*) To administer its electric system as a separate department, to establish and maintain a separate fund for its revenues from electrical operations, and not to mingle funds or accounts with those of any other of its operations.

(*b*) To keep the general books of accounts of its electric system according to a system of accounts to be prescribed by Authority after conference with municipality, which system of accounts will so far as possible be uniform with other systems prescribed and applied in other municipalities purchasing electrical energy from Authority. Authority will render such advisory accounting service in the setting up and administering of such accounts as Authority may deem reasonable.

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(*c*) To furnish promptly to Authority such operating and financial statements relating to electric-system operations as may reasonably be requested by Authority.

(*d*) To allow the duly authorized agents of Authority to have free access at all reasonable times to all books and records relating to electric-system operations.

10. *Financial and accounting policy.*—Municipality agrees to be bound by the following statement of financial and accounting policy:

(*a*) *Present value of electric system.*—Wherever accounting records are complete and have been properly kept, the present value of the electric system as of the date of initial delivery shall be taken as the actual historical cost of the property then in use or useful in the distribution of electricity as shown on the books, in-

cluding reasonable spare capacity for expansion and reasonable quantities of materials and supplies, less accrued depreciation, plus property under construction and a reasonable amount of cash working capital. If adequate reserves have not been set up for depreciation, the amount of depreciation accrued shall be estimated by engineering appraisal. Wherever accounting records are incomplete or have not been kept in such manner as to permit the determination of actual historical cost, the present value shall be determined as the replacement cost new of the property in use or useful in the distribution of electricity, less accrued depreciation. For the purpose of determining replacement cost new all existing property devoted to the distribution of electricity shall be included in a physical inventory. The items of such physical inventory shall then be priced on the basis of labor and materials cost then prevailing. The total direct cost of construction shall be increased by not more than 15 percent for general overheads.

(*b*) *Municipality's investment.*—The initial investment of municipality shall be defined as the present value of the system (i. e., as of the date of initial delivery), less all outstanding liabilities incurred in connection with the construction or acquisition of the electric system. Wherever general obligations have been issued by municipality, the proceeds of which have been used for both electric construction or operations and for general city purposes, an estimate shall be made of the amount of such proceeds which actually were used in the electric system. That part of the total indebtedness which is represented by this amount shall then be allocated or assigned as an obligation of the electric system. The initial investment as above defined shall be increased only as herein specifically provided and by the payment of moneys from the funds of municipality (other than the electric fund) for the payment of debt incurred by or on account of the electric system or otherwise for the benefit of the electric system.

(*c*) *Maximum return.*—The amount of municipality's investment in the electric system shall be determined as of the date of initial delivery and shall thereafter be adjusted as necessary from time to time and in any case at the end of each fiscal year. Municipality shall receive a return on this investment each month not to exceed one-half of 1 percent per month, computed on the basis of the investment as of the last day of the month next preceding.

(*d*) *Payments in lieu of taxes.*—Municipality may take from the electric department revenues or funds for the general funds of municipality an amount in lieu of taxes, to be determined as follows:

(1) The prevailing municipal property tax rate shall be applied to the value of the property used in electric operations within the municipal limits.

(2) The tax equivalent paid to municipality's general funds under (1) above shall be increased by application of the county and State tax rates to the value of the electric system, unless the county and/or State governments levy property taxes upon the electric system, in which case municipality shall not take the county and State tax equivalents for such taxes as are assessed.

(3) In determining the amount of which municipality is entitled in lieu of taxes under (1) and (2) above the tax rate shall be applied to the value of the property as determined in paragraph (a) above, plus additions, less retirements. The tax computations and remittances in lieu of such taxes shall be made monthly and shall be based upon the value as determined in paragraph (a) above, plus additions, less retirements, as shown by the books at the beginning of each current taxable year.

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(*e*) *Payment by electric department for services.*—The electric department shall pay the salary of those persons who devote their full time to the operation of the electric system, and an equitable portion of the

salary of those persons devoting part time to the operation of the electric system.

(*f*) *Withdrawals and reinvestments by municipality.*—If, at any time, municipality should withdraw from the funds of the electric department for municipality's general funds amounts in excess of the allowable return on investment and of the tax equivalent, municipality's investment shall be reduced in the amount of such excess withdrawals. Withdrawals of municipality's investment shall be made only at such times and in such amounts as will not interfere with the efficient operation of the electric system, including requirements for expansion. In no event shall the excess withdrawals by municipality exceed the amount of municipality's investment in the electric system. If, at any time, municipality should fail to withdraw the full amount due on account of its investment and/or on account of tax equivalent, that part or whole of the return and/or tax equivalent which is not withdrawn shall be added to municipality's investment to the extent such amounts are needed by or used in the operation of the electric system.

(*g*) *Short-term loans and advances.*—The electric department may lend funds or extend credit to the general fund of municipality only on a short-term basis (1 year or less, without the right of renewal). The amount so lent shall bear a rate of interest the same as the rate of return on investment determined by the governing body of municipality, not to exceed 6 percent per annum, payable monthly. At the end of each fiscal year all such matured loans and advances not yet paid shall be paid or closed out by adjustment of municipality's investment account.

(*h*) *Action by governing body of municipality.*—Except as limited in this statement, the governing body of municipality shall determine the rate of return on municipality's investment and/or the interest rate on loans and advances to it.

(i) *Publication of statement of municipality's investment.*—Municipality shall publish a statement of the amount of municipality's investment in the electric system and the outstanding loans and advances, at the close of each fiscal year. A copy of such statement shall be forwarded to Authority immediately at its office at Wilson Dam, Ala. After the closing of the books at the end of each month, municipality shall make known upon demand to any taxpayer of municipality or to any customer of the electric system the amount of municipality's investment in said electric system.

11. *Billing.*—Payment for energy used in any calendar month shall be due on the fifteenth of the succeeding month, or 5 days after receipt of bill from Authority, whichever is the later. Upon failure of municipality to pay for the energy used in any calendar month within 60 days after due date, Authority shall have the right, upon reasonable notice, to discontinue the supply of energy and refuse to resume delivery so long as any part thereof remains unpaid. Discontinuance of supply under this section will not relieve municipality of its liability for the agreed minimum monthly payment during the time the supply of energy is so discontinued. To any amount remaining unpaid on the first day of the calendar month following the due date, there shall be added a penalty of 1 percent and an additional 1 percent shall be added on the first day of each succeeding month until the amount is paid in full. All payments shall be made to Authority at its offices at Wilson Dam, Ala., or at such other place as Authority may from time to time designate.

12. *Interruption of service.*—Authority will furnish energy as agreed upon continuously so far as reasonable diligence will permit; but Authority, its officers, agents, or employees shall not be liable for damages when, for any reason, suspensions of the operation of the generation and transmission system serving municipality, or any part thereof, interfere with the de-

livery of electric energy to municipality, nor shall such an interruption constitute a breach of this contract on the part of Authority, but Authority shall make appropriate adjustment of the demand charge in the event of an interruption.

13. *Lower rates to other municipalities.*—If at any Page 234 time during the term of this agreement Authority should supply electricity to any municipality, municipal division, or department, or cooperative association, at a lower rate schedule than that applicable to municipality, and such lower rate schedule shall not be justified in the judgment of Authority by different conditions of service, making the cost to such other municipality, division, department, or cooperative relatively less than to municipality, such lower rate shall be made available to municipality so long as such lower rate schedule shall be given to such other municipality while this contract is in force.

14. *Developmental surcharge.*—In order to maintain municipality's revenues in the developmental period in which the increased demand for power may not compensate for the greatly reduced rates provided for in schedule B, municipality may also impose a surcharge upon those classes of consumers subject to a surcharge under the provisions of said schedule. Municipality may initially determine and may from time to time vary such surcharges, with the understanding, however, that all surplus revenues (as defined in the contract of which this schedule is a part) shall serve as the basis for the reduction or elimination of such surcharges. Surcharges shall be based on a straight percentage of bills, and shall apply uniformly to all members of classes as to which surcharges are authorized.

15. *Adjustment of rates.*—In the event of a major increase or decrease in general price and wage levels of such a substantial character as materially and substantially to change the cost basis upon which the wholesale rates fixed by this contract are predicated, the parties hereto agree to an adjustment of such

rates. Should the cost-of-living index for the United States as a whole compiled by the Department of Labor of the United States show a decrease for a period of 6 consecutive calendar months, or for any month in said period if index figures are not reported for each month thereof, of 30 percent or more under the index figures for the index period including the month in which this contract is signed, or for any month in said period if index figures are not reported for each month thereof, municipality and Authority agree to such a reduction in rates as will conform to the decreased costs of electricity supply, and should such index figures show a 30 percent or more increase for the same period or month, as the case may be, Authority and municipality agree to such an increase in rates as will conform to the increased costs of electricity supply. Municipality and Authority agree, promptly upon receipt of a request by the other, to confer with each other on the changes in rate necessary to conform to changes in the cost of electricity supply, and to endeavor to agree upon new rates which shall so conform. The new rates shall be substituted for the wholesale rates set forth in the contract of which this schedule is a part. The procedure of adjustment herein set forth shall be applicable should other major changes in price levels require further adjustment of rates.

16. *Reduction in rates.*—Authority agrees to reduce the wholesale rates herein fixed whenever, in the opinion of Authority, reductions in the cost of generating and transmitting energy make feasible such reductions in rates; the intention of the parties being that municipality shall participate in the benefits of reductions in the cost of generation and transmission.

17. *Voltage fluctuations caused by municipality.*—Electric service must not be used in such a manner as to cause unusual fluctuations or disturbances to Authority's system. Authority may require municipality at its own expense to install suitable apparatus to reasonably limit such fluctuations.

18. *Balancing of loads.*—Municipality shall at all times take and use energy in such manner that the load will be balanced between phases to within nominally 10 percent. In the event of unbalanced polyphase loads, Authority reserves the right to require municipality at its own expense to make the necessary changes to correct this condition, or to compute the balancing demand on the assumption that the load of each phase is equal to that on the greatest phase.

19. *Notice of trouble.*—Municipality shall notify Authority immediately should the service be unsatisfactory for any reason, or should there be any defects, trouble, or accidents affecting the supply of electricity. Such notices, if verbal, should be confirmed in writing.

20. *Single-point delivery.*—Unless otherwise specifically provided in this contract, if service is rendered for more than one substation, or through more than one transformation at the same substation, Authority will bill municipality for energy (but not demand) at each substation or additional transformation separately. Page 235

21. *Submetering.*—Municipality shall not sell electricity for submetering or further resale.

22. *Conflict.*—In case of conflict between any express contractual provision or any provision of the schedule of rates and charges and these terms and conditions, the contract or rate schedule shall apply.

Schedule of Rules and Regulations.

1. *Application for service.*—Each prospective customer desiring electric service may be required to sign distributor's standard form of application for service or contract before service is supplied by the distributor.

2. *Determination of classification.*—Service under the standard residential rate shall apply only to elec-

tric service in a single private dwelling and its appurtenances, the major use of which is for lighting and household appliances, for the personal comfort and convenience of those residing therein. Private dwellings in which space is occasionally used for the conduct of business by a person residing therein will be served under the standard residential rate. Where premises have mixed use the classification shall be determined by predominating use of floor space. The residential rate shall not apply to service to:

(*a*) Institutions such as clubs, fraternities, orphanages, or homes.

(*b*) Recognized rooming or boarding houses.

(*c*) The space in an apartment or other residential building primarily devoted to use as an office or studio for professional or other gainful purposes.

Availability of service under the Standard Commercial and Industrial rates shall be determined according to the schedule of rates and charges.

3. *Deposit.*—A deposit or suitable guaranty not exceeding twice the average monthly bill may be required of any customer before electric service is supplied. Distributor may at its option return deposit to customer after 1 year. Upon termination of service, deposit may be applied by distributor against unpaid bills of customer, and if any balance remains after such application is made, said balance shall be refunded to customer.

4. *Point of delivery.*—The point of delivery is the point, as designated by distributor, on customer's premises where current is to be delivered to building or premises. All wiring and equipment beyond this point of delivery shall be maintained by the customer.

5. *Customer's wiring-standards.*—All wiring of customer must conform to municipal requirements and accepted modern standards, as exemplified by the requirements of the National Electrical Safety Code, and the National Electric Code.

6. *Inspections.*—Distributor shall have the right, but shall not be obligated, to inspect any installation before electricity is introduced or at any later time, and reserves the right to reject any wiring or appliances not in accordance with distributor's standards; but such inspection or failure to inspect or reject shall not render distributor liable or responsible for any loss or damage resulting from defects in the installation, wiring, or appliances, or from violation of distributor's rules, or from accidents which may occur upon customer's premises.

7. *Underground service lines.*—Customers desiring underground service lines from distributor's overhead system must bear the excess cost incident thereto. Specifications and terms for such construction will be furnished by distributor on request.

8. *Customer's responsibility for distributor's property.*—All meters, service connections, and other equipment furnished by distributor shall be, and remain, the property of the distributor. Customer shall provide a space for, and exercise proper care, to protect the property of distributor on its premises; and in the event of loss or damage to distributor's property, arising from neglect of customer to care for same, the cost of necessary repairs or replacements shall be paid by customer.

9. *Right of access.*—Distributor's identified employees shall have access to customer's premises at all reasonable times for the purpose of reading meters, testing, repairing, removing, or exchanging any or all equipment belonging to distributor.

10. *Billing.*—Bills will be rendered monthly and shall be paid within 10 days from date of bill at the office of distributor. Failure to receive bill will not release customer from payment obligation. Should bills not be paid as above, the distributor may at any time thereafter, upon 5 days' written notice to customer, discontinue service. Bills paid on or before the final date

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of payment shall be payable at the net rates, but thereafter the gross rates shall apply, as provided in schedule of rates and charges. Should the final date for payment of the bill at the net rates fall on a Sunday or holiday, the business day next following the final date will be held as a day of grace for delivery of payment. Net rate remittances received by mail after the time limit for payment of said net rates will be accepted by distributor, if the incoming envelope bears United States Post Office date stamp of the final date for payment of the net amount, or any date prior thereto.

11. *Discontinuance of service by the distributor.*—The distributor may refuse to connect or may discontinue service for the violation of any of its rules and regulations, or for violation of any of the provisions of the schedules of rates and charges, or of the application of customer or contract with customer. Distributor may discontinue service to customer for the theft of current or the appearance of current theft devices on the premises of customer. The discontinuance of service by distributor for any causes as stated in this rule does not release customer from his obligation to distributor for the payment of minimum bills as specified in application of customer or contract with customer.

12. *Reconnection charge.*—Whenever service has been discontinued by distributor, as provided above, a charge of not less than $1 may be collected by distributor before service is restored.

13. *Termination of contract by customer.*—Customers who have fulfilled their contract terms and wish to discontinue service must give at least 3 days' written notice to that effect, unless contract specifies otherwise. Notice to discontinue service prior to expiration of contract term will not relieve customer from any minimum or guaranteed payment under any contract or rate.

14. *Service charges for temporary service.*—Customers requiring electric service for a period not exceeding 30 days may be required by distributor to pay all costs for connection and disconnection incidental to the supplying and removing of service. This rule applies to circuses, carnivals, fairs, temporary construction, and the like.

15. *Interruption of service.*—The distributor will use reasonable diligence to provide a regular and uninterrupted supply of current, but in case the supply of current should be interrupted for any cause, distributor shall not be liable for damages resulting therefrom.

16. *Voltage fluctuations caused by customer.*—Electric service must not be used in such a manner as to cause unusual fluctuations or disturbances to distributor's system. Distributor may require customer, at his own expense, to install suitable apparatus which will reasonably limit such fluctuations.

17. *Additional load.*—The service connection, transformers, meters, and equipment supplied by distributor for each customer have definite capacity, and no addition to the equipment or load connected thereto will be allowed except by consent of distributor. Failure to give notice of additions or changes in load, and to obtain distributor's consent for same, shall render the customer liable for any damage to any distributor's lines or equipment caused by the additional or changed installation.

18. *Stand-by and resale service.*—All purchased electric service (other than emergency or stand-by service) used on the premises of customer shall be supplied exclusively by distributor, and the customer shall not directly or indirectly, sell, sublet, assign, or otherwise dispose of, the electric service or any part thereof.

19. *Single-point delivery.*—The rates named in the schedule of rates and charges for each class of service

are based upon the supply of service to the entire premises through a single delivery and metering point, and at a single voltage. Separate supply for the same customer at other points of consumption, or at a different voltage, shall be separately metered and billed.

20. *Notice of trouble.*—Customer shall notify distributor immediately should the service be unsatisfactory for any reason, or should there be any defects, trouble, or accidents affecting the supply of electricity. Such notices, if verbal, should be confirmed in writing.

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21. *Nonstandard service.*—The customer shall pay the cost of any special installation necessary to meet his peculiar requirements for service at other than standard voltages, or for the supply of closer voltage regulation than required by standard practice.

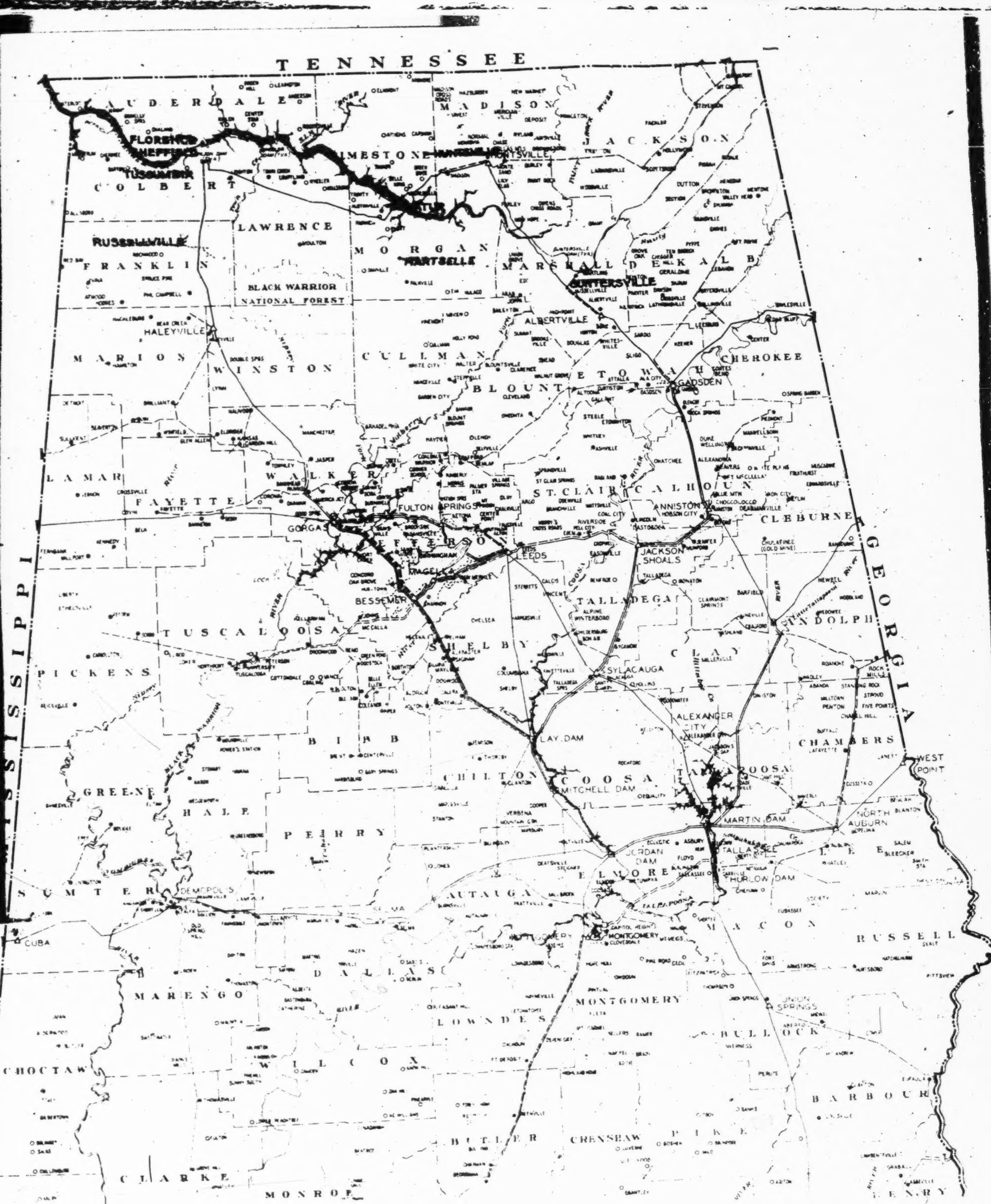
22. *Meter tests.*—Distributor will, at its own expense, make periodical tests and inspections of its meters in order to maintain a high standard of accuracy. Distributor will make additional tests or inspections of its meters at the request of customer. If such tests show that the meter is accurate within 2 percent, slow or fast, no adjustment will be made in customer's bill and the testing charge of $1 per meter will be paid by customer. In case the test shows meter to be in excess of 2 percent, fast or slow, an adjustment shall be made in the customer's bill over a period of not over 30 days prior to date of such test, and cost of making test shall be borne by distributor.

23. *Filing and posting.*—A copy of these rules and regulations, together with a copy of distributor's schedule of rates and charges, shall be kept open to inspection at the offices of distributor.

24. *Scope.*—This schedule of rules and regulations is a part of all contracts for receiving electric service from distributor, and applies to all service received from distributor whether the service is based upon contract, agreement, signed application, or otherwise.

25. *Revisions.*—These rules and regulations may be revised, amended, supplemented, or otherwise changed from time to time. Such changes, when effective, shall have the same force as the present rules and regulations.

26. *Conflict.*—In case of conflict between any provision of any rate schedule and the schedule of rules and regulations, the rate schedule shall apply."


TENNESSEE
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SHEFFIELD
TUSCUMBIA
COLBERT
LIMESTONE
HUNTSVILLE
JACKSON
LAWRENCE
RUSSELLVILLE
FRANKLIN
MORGAN
DECATUR
MARSHALL
DE KALB
GUNTERSVILLE
BLACK WARRIOR
NATIONAL FOREST
HALEYVILLE
ALBERTVILLE
MARION
WINSTON
CULLMAN
CHEROKEE
BLOUNT
ETOWAH
GADSDEN
LAMAR
WALKER
ST. CLAIR
CALHOUN
FAYETTE
FULTON SPRINGS
GORGAS
ANNISTON
CLEBURNE
JEFFERSON
LEEDS
JACKSON SHOALS
BESSEMER
TALLADEGA
RANDOLPH
TUSCALOOSA
SHELBY
CLAY
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LAY DAM
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COOSA
MITCHELL DAM
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GREENE
HALE
PERRY
MARTIN DAM
NORTH AUBURN
LEE
SUMTER
DEMOPOLIS
JORDAN DAM
ELMORE
TALLASSEE
HURTSBORO DAM
AUTAUGA
MACON
CUBA
MONTGOMERY
RUSSELL
DALLAS
MARENGO
LOWNDES
MONTGOMERY
UNION SPRINGS
BULLOCK
CHOCTAW
WILCOX
BARBOUR
BUTLER
CRENSHAW
PIKE
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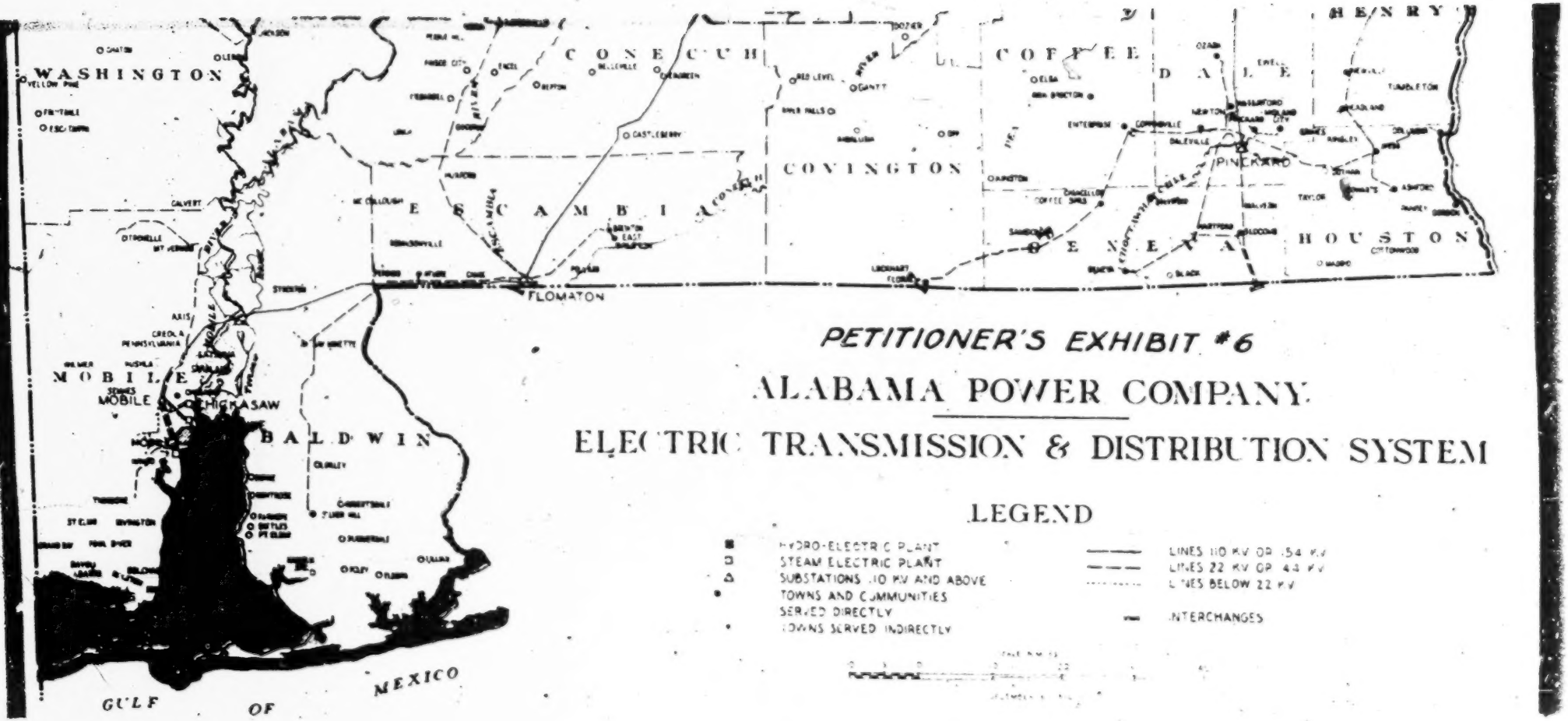

PETITIONER'S EXHIBIT #6

ALABAMA POWER COMPANY

ELECTRIC TRANSMISSION & DISTRIBUTION SYSTEM

LEGEND

- ■ HYDRO-ELECTRIC PLANT
- □ STEAM ELECTRIC PLANT
- △ SUBSTATIONS 110 KV AND ABOVE
- • TOWNS AND COMMUNITIES SERVED DIRECTLY
- • TOWNS SERVED INDIRECTLY

- ——— LINES 110 KV OR 154 KV
- — — LINES 22 KV OR 44 KV
- ····· LINES BELOW 22 KV
- INTERCHANGES